SECTION V.—CRIMINAL TRIALS.

§ 1.—*General Features.*

Criminal Courts are open to the public (section 352), but the Magistrate or the presiding Judge may order the exclusion of the public at any particular trial.

The accused has a right to be defended by a "pleader," *i.e.*, Counsel, or by an attorney of a High Court or a professional pleader[2]. He may also, with the permission of the Court, be aided in his defence by a "mukhtár" (under the Legal Practitioners' Act) or a person not being a qualified professional lawyer. (Section 340, and definition clause (*s. v.* "pleader.")

The *examination* of the accused for certain purposes (see section 342) is lawful in all trials and enquiries previous to committal, which is a feature in which our law differs from the English law, as it at present stands. The Code of 1882, it should be recollected, has somewhat restricted the power of examination, from what it was under the Code of 1872-74. The intermediate examination is now confined to enabling the accused (if he can) to explain circumstances appearing in the evidence against him.

§ 2.—*Public Prosecutors.*

A very few words on this subject will suffice. The local Government may appoint such officers (section 492) either for a particular case or for classes of cases, or for all cases[3]. His powers of appearing and pleading and withdrawing charges, and his right to get notice of appeal, are stated in sections 493-4 of the Code.

All Sessions cases *must* be conducted by the public prosecutor (section $\frac{492}{270}$), or some officer specially appointed by the Magis-

[2] Professional pleaders are qualified and allowed under Act XVIII of 1879.

[3] In many places there are no such prosecutors, and it is often a source of inconvenience in forest cases that either the divisional or sub-divisional officer must attend himself to prosecute, or else the case is left to some ignorant Forest Guard or Forester and may fail: to say nothing of the inconvenience of Forest Officers being taken away from their beats so long. This, however, will remedy itself as forest estates get more settled and cases are of sufficient importance to justify special arrangements being made.

trate of the district. Any other Court may permit any person to conduct the case as prosecutor, but no one is entitled so to act without permission. If permitted such person may personally conduct the prosecution or by Counsel. (Section 495.)

§ 3.—*Compounding Offences.*

Generally speaking, when once a criminal charge is laid before the Police or a Magistrate, it must be carried through to the end, and this is especially the case with the graver sort of offences.

There are, however, exceptional cases. Some offences may be lawfully *compounded*, and when the offence itself is compoundable, an *attempt* to commit the offence, or an *abetment* of it, is compoundable also: This may be either before the case is brought into Court or afterwards with the permission of the Court, and then the charge may be withdrawn: the effect of this is the same as an acquittal. (Section 345.)

What offences may be so compounded is now stated clearly in section 345, and also in a column of schedule II. The exception to section 214 of the Indian Penal Code, which was very obscure, has been repealed by Act VIII of 1882.

In any case, however, in which there is a public prosecutor, the official may, with the consent of the Court, *withdraw* any charge. (Section 494.) This operates as a discharge, if made before the charge is drawn up, but as a full acquittal if after the charge is made. In any case instituted otherwise than on complaint, a 1st class Magistrate or any other Magistrate with the previous sanction of the District Magistrate may stop the proceedings and "release" the accused without either acquitting or convicting, or pronouncing any judgment: only reasons must be given for the order. (Section 249.)

In all cases instituted on complaint (section 248), the Magistrate may permit the withdrawal of the complaint, and this done, the same complaint cannot afterwards be re-instituted.

In forest cases, it is not *necessary* to bring to trial any cases but those under sections 61-2. A forest officer *who has been*

empowered may accept, by way of compensation for damage done, a sum of money, on payment of which the offender is free, and property seized, or cattle about to be sent to pound, are released. This payment condones the *forest* offence, but should the act done constitute an offence against any other law, the offender may still be tried under the law. (Forest Act, section 67.) The Burma Act, section 66, contains similar provisions, only the exception mentioned in the Indian Act is not maintained. Indeed, this exception is practically not necessary. It would be extremely unfair to let a man off on the forest charge and then prosecute him under the Penal Code; practically, such a thing would never be done; and if so there is no use in the exception[4]. A forest officer may feel some little difficulty in acting under section 67. For it often happens, that an act constitutes an offence both under the Forest Act and under the Penal Code; in the one aspect it is always compoundable by reason of section 67, in the other, it may not be. The solution is this; if the offence is petty and no great villany is disclosed, then the act may be treated as a Forest Act offence and compounded: if it is grave, the offence should be at once treated as under the Penal Code, or at any rate, as not fit to be compounded.

It is hardly necessary to remark that in all cases where the public prosecutor withdraws, or a complainant abandons the case, this must not be done for a *consideration*, otherwise, if the offence is not by law compoundable the person so acting might be prosecuted.

§ 4.—*Inquiry by Magistrate previous to committing to the Sessions.*

The first kind of criminal procedure described in the Code is when a Magistrate holds *an enquiry* previous to *committing* the case for trial to the *Court of Sessions*. In the Panjáb and other Non-regulation Provinces, where the Magistrate of the district may be vested with, and usually has, the special powers under section 30, it is only offences punishable with death, or other graver offences

See also page 136, note, as to the French Law.

in which even a seven years' sentence would be inadequate, that are committed to the Sessions. In other provinces all cases are so, that are specially noted in Schedule II of the Code as triable only by the Court of Sessions, or are of such a character that the two years' sentence which a Magistrate is competent to pronounce would be inadequate. Such cases are usually, but not necessarily, sent up after investigation by the Police. The proceedings before the Magistrate consist in taking the evidence[5] of the complainant and prosecution witnesses, in the presence of the accused person, who has power to cross-examine. The Magistrate may also call and examine any one whose evidence he considers important, and may recall and re-examine any witness. (Section 219.)

The accused may be examined, but is at liberty to refuse to answer, and cannot be punished for refusing, or if the answers he gives are false: but the Magistrate may draw any just inference from his refusal[6]. The examination properly recorded, is admissible afterwards at the trial as evidence, and so is any statement made before a Magistrate (section 164) before the enquiry. If the evidence does not establish a case for trial by the Sessions Court, but does establish a case triable by a Magistrate, the *trial* may be proceeded with by the Magistrate, or if there is no case the accused is *discharged*. If a Sessions case is *primâ facie* established, the Magistrate draws up a formal charge[7] and commits the prisoner to take his trial before the Court of Sessions or (it may be in some cases, *e.g.*, murder, &c., by a European British subject) before the High Court.

The charge (1), with what is called a "calendar," a formal sheet showing the names of the parties and witnesses, &c. (2), and the record of evidence (3), together with any documents or articles of

[5] The *method of recording* evidence, examinations, &c., will be described in a separate section.

[6] See Evidence Act I of 1872, section 114. The inference may be that the answer if given would be unfavourable to him.

[7] The rules about *charges* will be described in a separate section.

property connected with the case as "exhibits" (4), are sent to the Sessions or High Court.

Witnesses for defence are not usually called at the enquiry, but the accused must give a list of the persons he wishes to have summoned for the trial. (Section 211.) A Magistrate is bound to summon these (section 216) unless he thinks that a witness is included for the purpose of vexation or delay or defeating the ends of justice, and then he may require the accused to satisfy him that the witness is material, and, in doubt, may refuse to summon unless a sum of money to repay the expenses of the witness is deposited. (Section 216, clause 3.)

The charge must be read *and explained* to the accused, and a copy or translation given him if he so requires. (Section 210.)

I shall not describe the trial before the Sessions or High Court. It is conducted in the latter case with a Jury, and in the former with Assessors, unless a Government order has introduced trial by Jury. The whole procedure is under Chapter XXIII[8]. The forest officer is so little likely to have anything to do with such trials that it is not necessary for him to enter on the study of the procedure.

§ 5.—*Trial of Summons Cases.*

I have already indicated that cases triable by Magistrates are classed into "summons cases" and "warrant cases" according as a summons or a warrant ordinarily issues in the first instance, to compel the appearance of the accused person.

Summons cases are also tried with less formality. The chie features about a summons case are—

(1) that no formal charge is drawn up. The complaint and summons indicate the nature of the case and the facts to be enquired into, and the Magistrate may convict or acquit of any offence which from the facts he appears to have committed or not to have committed. (Section 246.)

[8] The separate procedure law for High Courts, Act X of 1875, is now repealed. All provisions are now contained in one Code.

(2) The complaint may be withdrawn under circumstances already stated

(3) The evidence is recorded shortly, not in full, as will presently be described.

If the complainant does not appear at the hearing, or at an adjourned hearing, the *complaint* must be *dismissed* (section 247), unless the Magistrate thinks fit to grant an adjournment or a further adjournment as the case may be.

If he appears, the substance of the complaint is stated to the accused, who is asked if he has any cause to show why he should not be convicted. (Section 242.) If he admits the case and shows no cause, this is recorded and he may be convicted. If he denies it, the evidence for the complaint is heard, and then such witnesses *as the accused produces* are heard in his defence. (Section 244.)

It is ordinarily the duty of both parties in summons cases (not being cognizable cases) to produce their own witnesses; but the Magistrate *may* grant summons and *may* adjourn the case (section 244). The parties should therefore, if they think the witnesses will not attend, apply for summons before the date fixed for hearing so as to avoid the risk of being refused an adjournment. If a summons case happens to be cognizable by the Police, the Police would produce the evidence under the usual procedure already described. If a forest officer has made the arrest and taken the accused before the Magistrate, he would either get an investigation through the Police, or produce his own witnesses, or apply for summons.

In all trials of forest offences, whether summons or warrant, if a forest officer has been empowered under section 71 of the Forest Act, and has made an enquiry into the offence, and has received and recorded[9] evidence *in the presence of the accused*, this evidence may be put in at the trial and is receivable. (Section 71, Forest Act; B. 70.)

[9] He should do this in full, either taking it all down in full narrative form in his own hand, or, if a European officer, causing it to be so taken down in vernacular and making a memorandum of the substance at the same time himself in English, or taking the whole down in full in English.

When the evidence has been heard, the Magistrate may find the person guilty and convict, or may dismiss the case and acquit the accused. If he find cause to dismiss the complaint as frivolous and vexatious (section 250), he may award a sum not exceeding Rs. 50 (recoverable as a fine) as compensation to the person wrongfully accused.

In Forest cases, in the case of a conviction under section 25 of the Forest Act, but *not* under section 32, the Court may, in *addition* to the punishment, order compensation for the damage done to be paid. So in the Burma Act with reference to section 26.

§ 6.—*Trial of Warrant Cases.*

I may here remark that it is not always necessary to go through the whole form of trial when the accused admits the case: this is equally true of summons and warrant or any other cases.

By section 256, the Magistrate may always convict on a man's own admission, but need not; and indeed, in any grave case, or any case in which there is the least reason to suppose the man was admitting the case out of fear or being influenced or confused, or merely from stupidity or ignorance, the Court would not convict without taking evidence.

In a trial of a warrant case the chief features are—

(1) The complainant and his witnesses are first examined and may be cross-examined by the accused;
(2) The evidence is taken down in full;
(3) If no offence is established accused is *discharged*, which will not prevent his again being brought up on new or additional evidence;
(4) A formal *charge* is prepared setting forth the offence;
(5) The defence and witnesses are heard;
(6) A final judgment, which must be either of *conviction* or *acquittal*, and sentence (in the former case) is passed.

A discharge cannot be ordered before the prosecution witnesses have been heard (unless the complainant is absent and section 250 applies). When the charge has been drawn up and read and

explained to the accused (after the prosecution witnesses have been heard) he is asked if he is guilty or not guilty. If he pleads not guilty, or has a defence to make, he is called on to enter upon it (section 256), and to produce his witnesses if in attendance. He may also recall and cross-examine the prosecution witnesses. If his witnesses are not present, the Magistrate is *bound* (section 257) to summon them[10], but is not bound to adjourn the case (section 344) (so that the accused should, if possible, summon his witnesses beforehand when the case first came up, before the date of trial is fixed, as is evidently intended by section 362[1].)

If the Magistrate, after the defence is concluded, finds the person not guilty, he records a judgment of *acquittal;* if guilty, of *conviction.* After the charge is once drawn up, no other result but acquittal or conviction is possible. (Section 258.)

§ 7.—*The Judgment.*

It will be sufficient for the forest officer to know, regarding the nature and contents of the *judgment*, that it is accompanied always by a formal sheet, showing the "*finding*," which if for "not guilty" directs the accused to be acquited, and if "guilty" directs that he suffer such and such a sentence. The judgment is a review of the case, giving reasons for finding the prisoner guilty or not guilty as the case may be.

The separation of the "judgment" and the final "finding sheet" is a matter of practice: it is all included in the term "judgment" as used by the Code. (Section 367.) The judgment must be written by the presiding officer himself in English or the language of the district. Judges who know English may use that language only if they can do so sufficiently to make out a clear and intelligible judgment. (Section 367.) The offence found

[10] Subject to the precautions in case witnesses are inclined to cause delay, &c., section 257.

[1] Of course if some new point come out in the trial which it was not reasonable to expect the accused to know beforehand, and he declares himself able to produce evidence to refute it, the Magistrate *would* always grant an adjournment to enable such witnesses to be summoned.

must be clearly stated, and it must set forth these points for determination, the finding on them, and the reasons for that finding. It is *dated* and *signed* by the Judge in open Court, at *the time* of *delivering it.* After this it cannot be altered or reviewed by the Judge himself.

8.—*Incidents of Trial.*

It may sometimes happen in the course of the proceedings that the case turns out to be really one which the Magistrate is not competent to try, or that it discloses facts of a nature which make a case more appropriate for a Sessions trial: then the Magistrate must stay proceedings, and either commit to the Sessions (if he is empowered so to do), or refer to a Magistrate with powers under section 30. (See sections 346-7.)

And generally if in the course of the proceedings (section 346) it appears to a Magistrate that he is not competent to try or to commit to the Sessions, he must stay proceedings and refer to the Magistrate to whom he is subordinate.

In such cases the Magistrate taking up the case must begin *de novo,* but any statement of the accused duly recorded may be put in evidence.

Another incident likely to happen is that contemplated in section 349. A Magistrate having the limited powers of the second or third class, may have jurisdiction to try a case, and yet if he may find that the facts disclose an offence which demands a severer punishment than he is authorized to award, he can then record a finding of guilty but pass no sentence and submit his proceedings to the District or Sub-divisional Magistrate to whom he is subordinate. (*See* page 362.)

A District or a Sub-divisional Magistrate may (section 528) withdraw any case from a Subordinate Magistrate and try it himself, or make it over for trial to any competent Magistrate.

A person once acquitted or convicted cannot be tried again on the same facts. But the circumstances under which another trial is possible (as for example where a man is convicted of causing

grievous hurt, and the victim afterwards dies, so that the case becomes one of murder or culpable homicide, &c.), are clearly stated in section 403 and the numerous illustrations to that section, to which the reader may refer on occasion.

9.—*Summary Trials.*

In order to facilitate the speedy disposal of petty cases of all kinds, a method of trial, even simpler and briefer than that of the summons case, has been provided.

It is often, of course, proper to class an offence in the category of more serious crime, and yet instances of the offence may be very petty in character. Theft is in its general nature a serious offence; but the act of stealing a piece of cloth worth 2 annas hardly demands a very formal or detailed trial. Consequently all the offences specified in section 260, which include all summons cases, and as many warrant cases as are there specified, may be tried "*summarily*" by the *Magistrate of the District*, or by a Magistrate of *first class specially empowered*. (Section 260[2].)

Forest offences are, by section 65 of the Forest Act, brought under these provisions, provided the offence is not punishable with more than six months' imprisonment. Practically that means that all forest cases, small enough to be prosecuted under the Act (except those described in section 62), may be tried summarily. In Burma the Forest Act does not allude to the matter because it is not necessary. As forest offences are mostly punishable with fine only or with imprisonment not exceeding six months, or with both, they are *summons* cases, and therefore (there being no special provisions otherwise) they are triable under the Criminal Procedure Code, and consequently may be tried summarily if they come before the class of Magistrate empowered to try summarily any kind of cases.

In cases where Government has constituted a Bench of Magistrates, the Bench may be specially empowered to try summarily; but in that case the provisions are somewhat varied. As Magistrates' Benches usually sit in large towns, and their procedure is not likely to come under a Forest Officer's notice, I do not allude to the subject.

It should be recollected that in a *summary trial it is the form of record that is shortened and simplified, not the procedure itself.* (Section 262.) The procedure of a warrant case or a summons case is still followed according as its nature is one or the other. No sentence of imprisonment exceeding three months can be passed on a summary trial.

If the case is one in which there is no appeal, no record is made at all of evidence, nor is there a charge or formal judgment; but a *register book* is kept up with the headings specified in section 263, which may be referred to for details, but which in brief exhibits the names, dates, result of trial, and other salient and necessary facts of the trial and its result.

If there is an appeal, then the register book is not used, but the Magistrate records a judgment or single proceeding, in which the reasons for his decision and the substance of the evidence, and the particulars which would be otherwise entered in the book are embodied. (Section 264.)

The table annexed will show at a glance how these three forms of trial just described, differ.

Order of Proceeding and Form of Record, compared in—

Warrant Case.	Summons Case.	Summary Trial.
Accused if not in custody (in cognizable cases) is brought up on Magistrate's warrant. Personal appearance necessary.	Accused (if not on bail from a police investigation in cognizable case) appears in pursuance of a summons. Personal appearance may be dispensed with. Offences always bailable.	Accused brought up according as case is under 1st column or 2nd.
Offences often not bailable, but many are bailable.		I. If no appeal lies.[1]
1. Evidence of complainant and witnesses [recorded in full.] [Police produce witnesses in cognizable cases. Magistrate summons in non-cognizable cases.]	1. Substance of complaint stated to accused he is called on to show cause why he should not be convicted: if he does not, may be convicted at once: if he has a defence—	No record or formal charge. Proceedings all *vivâ voce* in same order as in regular trials, but record only in register book in columns.
2. If no *primâ facie* case accused discharged. 3. Formal charge drawn up. Accused called on to plead.	2. Evidence heard on both sides. [Not recorded in full. Magistrate makes memorandum of its substance.] [Parties ordinarily produce their own witnesses in non-cognizable cases:—may apply for summons.]	II. If there is an appeal—
4. Defence and witnesses heard. [Magistrate bound to summon witnesses.] (Section 257).	3. Complaint may be dismissed as frivolous and compensation given.	No register book, no record or formal charge, but a single document, a judgment, stating all facts and containing the substance of the evidence given, and the sentence or acquittal.
5. Judgment and finding—must be either "acquitted" or "convicted."	4. No formal charge: any offence that the facts disclose may be found. 5. Judgment can only be for acquittal or conviction.	
May be an adjournment, inquiry for absent witness, and from time to time (see section 344).	Absence of complainants on day of trial or subsequent adjourned hearing (section 344) enables Magistrate to dismiss case. (Section 247.)	
Withdrawal not allowed, except if the public prosecutor withdraws (see also section 240).	Complaint may be withdrawn.	

[1] *i.e.*, sentence not exceeding three months, or fine not exceeding Rs. 200 only, or whipping only; appeal is allowed if two or more are combined and *always* to European British subjects, whatever the sentence.

SECTION VI.—THE METHOD OF OBTAINING ATTENDANCE OF WITNESSES AND OF RECORDING EVIDENCE AND EXAMINATION.

§ 1.—*Oath or Solemn Affirmation.*

All witnesses are examined on oath, or if they object to an oath, or are Hindus or Musalmans, on solemn affirmation (this is under the oaths Act X of 1873). Accused persons, when examined, are *never* subject to oath or affirmation.

§ 2.—*Form of record.*

The ordinary way of recording evidence in an enquiry previous to committal, or in a warrant case, is for an officer of the Court to take down the whole evidence in the language of the district, in the presence and hearing of the presiding officer, who signs this record of each statement. It is recorded in narrative form, not in form of question and answer; but any particular question and the answer may be recorded. (Section 356.) The presiding officer, *as this goes* on, takes down *with his own hand* a memorandum of the substance of the evidence, and this also forms part of the record and is also signed by the presiding officer.

Native Magistrates in such cases usually take down the whole evidence themselves, for there would be no object in having a full record, and a memorandum of substance in the same language.

In important trials the Magistrate or Sessions Judge takes down the whole evidence in full, with his own hand, this being specially directed by the Local Government. (*See* section 357.)

In petty cases, even though, according to class, they are warrant cases, but are specified in section 260, clauses *b to k*, and which would be tried summarily by the Magistrate of the district or an empowered Magistrate, if they are tried by a first or second-class Magistrate *who is not empowered* to try summarily, the ordinary detailed record is not required, and the record, *as provided in a summons case*, is adopted. (Section 355.)

The Local Government may (section 356) issue orders directing that a particular method (one of the above) be followed; in each province it is necessary to ascertain if any such orders are in existence. The above, however, is the usual practice.

In summons cases (section 355) not being tried summarily, a memorandum of the substance only is made by the Magistrate, and this is signed by the Magistrate and forms part of the record.

There is nothing, however, to *prevent* a Magistrate from adopting the fuller record of evidence, if under the circumstances he thinks it right to do so. (Section 358.)

At the end, the Magistrate must record such remarks regarding the demeanour of the witness while under examination as he thinks necessary. (Section 363.)

§ 3.—*Examination of Accused.*

Whenever an accused person is examined, though no oath or affirmation is administered, no inducement offered to make him speak, and no punishment for refusing to answer or answering falsely, can be given, his examination is recorded in the manner provided by section 364.

§ 4.—*Other Matters.*

It is not necessary for the forest officer to go into the details of the *tender* of *pardon to accomplices*, and making them what is popularly called "Queen's evidence." This is described in section 337[3].

In some cases of medical evidence and Chemical Examiner's Report, the deposition is admissible without personal attendance of the witness. It is not necessary to go into details.

If an accused person absconds and cannot after pursuit be arrested, there is a special provision (section 512), which I may just allude to, for taking down the evidence of witnesses; and afterwards, if the accused person is arrested, and the witness cannot then be produced without great delay and inconvenience, or if the deponent is dead, the evidence so recorded may be put in at the trial.

§ 5.—*Obtaining the Attendance of Witnesses.*

In warrant cases a large number will be cognizable by the Police and the prosecution witnesses will be got by the Police and be

[3] The Code of 1882 still confines this to cases triable exclusively by the Court of Session or High Court.

under their own recognizances to appear and give evidence. In other warrant cases, as well as to obtain attendance of witnesses for the defence, a Magistrate's summons is issued.

In summons cases, the parties, as already remarked, usually produce their own witnesses, but summons may be applied for if necessary.

When the Court has reason to believe that any witness will not attend without being compelled a warrant may be issued. (Section 90.) And so if a person summoned neglects or refuses to appear, then, *on proof of service,* and if no reasonable excuse appear, a warrant may be issued. (Section 90, clause *b*). If the warrant cannot be executed, and the Court thinks that the witness has absconded, or is concealing himself, a proclamation may be issued under section 87, and *movable* property may be attached.

The attachment shall be within the local jurisdiction of the Magistrate, but may be made outside, if the warrant is endorsed by the Magistrate of the jurisdiction in which the property is.

If the witness appears and shows that he is not intentionally avoiding service, or absconding, the property may be released (or if sold, the proceeds), subject to such order about the costs of attachment as the Court may give. (Section 89.)

§ 6.—*Witness refusing to answer.*

A person *refusing to answer* (of course this does not refer to an *accused* person), may be committed to custody for a term not exceeding seven days, unless, in the meanwhile, he consents. (Section 485.) If, in spite of this coercion, he persists in refusing, he may be dealt with for a contempt of Court under sections 480-1 of the Code.

7.—*Commission to absent Witness.*

It sometimes happens that a witness lives at such a distance that his attendance cannot be had without great delay and inconvenience, in such cases the code provides for his examination by commission. For details Chapter XL of the Code must be referred to.